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**Remarks**

Please apply the fee previously paid for the brief submitted on April 27, 2006. Prosecution was reopened by the Examiner prior to a decision on the merits. See MPEP 1207.04.

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

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| Date | Dec. 1, 2006 |
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# IN THE UNITED STATES PATENT & TRADEMARK OFFICE

## BEFORE THE BOARD OF PATENT APPEALS
## AND INTERFERENCES

In re: Application Serial No.: 09/920,961

Filing Date: 08/03/2001

First Named Inventor: Edwin Lyda

Group Art Unit: 2611

Examiner's Name: Tran, Hai V.

Attorney Docket No.: LYDA-01

## APPELLANT EDWIN LYDA'S MAIN BRIEF

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## I. **REAL PARTY IN INTEREST**

The real party in interest with respect to the present application is Edwin Lyda, an individual, who is the inventor of the invention disclosed in the application. The patent application has not been assigned or licensed.

## II. **RELATED APPEALS AND INTERFERENCES**

Presently, there are no other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

## III. **STATUS OF CLAIMS**

Claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 stand rejected.

Claims 8 through 12, 16, and 22 have been cancelled.

Appellant is appealing the rejections of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25.

The text of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 are set out in the Appendix.

## IV. **STATUS OF AMENDMENTS**

Appellant, hereinafter "applicant," has filed no amendment subsequent to the final rejection, which was mailed on November 2, 2006. Applicant requests entry of a correction in claim 20 to amend the word "generating" to the word "operating" in order to correct a typographical error that was made in the previously entered amendment.

# V. <u>SUMMARY OF CLAIMED SUBJECT MATTER</u>

The present invention relates to an apparatus and method that allows users to respond to any kind of program, without using a personal computer.

Independent claim 1 claims an electronic response device (p. 8, l. 2; Fig. 2, reference character 200; p. 4, l. 14; Fig. 4 reference character 410) other than a personal computer (p. 4, l. 3), the response device configured to allow a user to send data over a standard communication system (p. 4, l. 26; Fig. 4, reference character 430) in response to a program received apart from the response device (p. 3, ll. 12-18; Fig. 1, reference character 100), the response device comprising:

    a user input mechanism for entry of user input and responses, the mechanism operating without receiving signals eliciting a response by the user (p.8, l.2; Fig. 2, reference character 200; p. 4 ll. 4-14; Fig. 4, reference character 410);

    means for requiring the user's input of a program identifier code for the program received apart from the response device (p. 4, ll. 13-24; Fig. 1, reference character 130);

    means for providing a user identifier code . . . (p. 4, ll. 19-21; Fig. 1, reference character 130);

    a CPU for correlating the responses . . . (p. 7, ll. 13-21; Fig. 1, reference character 150); and

    a transmitter . . . (p. 7, ll. 21-23; Fig. 1, reference character 160).

Independent claim 13 claims a method for receiving and processing responses to a program . . . comprising:

providing a program identifier code for the program (p. 4, ll. 21-24);

providing means for identifying an audience member (ll. 19-21);

providing a user input device other than a personal computer, the device operating

without receiving signals eliciting a response by the audience member (p. 4,

ll. 4-14; Fig. 4, reference character 410; p. 8, l. 2; Fig. 2, reference character

200);

having the audience member input the program identifier code into the user input

device (p. 4, ll. 13-24; Fig. 1, reference character 130);

having the audience member input responses into the user input device (p. 4, ll. 13-

19; Fig. 1, reference character 130);

transmitting response data . . . (p. 4, ll. 25-27; Fig. 4, reference character 430);

collecting the response data at a central location (p. 6, ll. 20-26; Fig. 1, reference

character 140).

correlating the program identifier code to the responses (p. 4, ll. 21-22; p. 6, ll. 21-

26);

processing the response data (p. 7, ll. 13-21; Fig. 1, reference character 150).

Independent claim 20 claims a system for receiving and processing responses to

a program . . . comprising:

providing a program identifier code for the program being presented (p. 4, ll. 21-24);

providing a user input device, the device operating without receiving signals eliciting

a response by a user (p. 8, l. 2; Fig. 2, reference character 200; p. 4, ll. 4-14;

Fig. 4, reference character 410) other than a personal computer (p. 4, l. 3);

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having an audience member input the program identifier code into the user input

device (p. 4, II. 13-24; Fig. 1, reference character 130);

having the audience member input responses into the user input device (p. 4, II. 13-

19; Fig. 1, reference character 130);

transmitting the program identifier code and the responses . . . (p. 4. II. 25-27; Fig.

4, reference character 430);

collecting, correlating and processing the program identifier and the responses (p.

6, II. 20-26; Fig. 1, reference character 140; p. 4, II. 21-22, p. 7, II. 13-21; Fig.

1, reference character 150);

routing the responses to a program presenter (p. 7, II. 21-25; Fig. 1, reference

character 160).

## VI. <u>GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL</u>

A.     Whether claims 1 through 7, 13 through 15, 17 through 22, and 23 through 25 fail

to comply with the enablement requirement of 35 U.S.C. §112.

B.     Whether claims 1, 2, 13 through 15, 17, 20, 21, and 23 are unpatentable under 35

U.S.C. §102(b) as being anticipated by Ferris *et al.* (WO 99/04568).

C.     Whether claim 3 is unpatentable under 35 U.S.C. §103(a) as being unpatentable

over Ferris *et al.* (WO 99/04568 in view of Dobson U.S. 6,704,317).

D.     Whether claims 4, 5, 6, 18 and 24 are unpatentable under 35 U.S.C. §103(a) as

being obvious over Ferris *et al.* (WO 99/04568).

E.     Whether claim 7 is unpatentable under 35 U.S.C. §103(a) as being unpatentable

over Ferris *et al.* (WO 99/04568) in view of Yoshinoba *et al.* (U.S. 5,721,584).

F.    Whether claims 19 and 25 are unpatentable under 35 U.S.C. §103(a) as being

unpatentable over Ferris *et al.* in view of Lewis *et al.* (U.S. 5,303,042).

# VII. **ARGUMENT**

A.    Rejection of claims 1-7, 13-15, and 23-25 Under 35 U.S.C. §112 as Failing to Comply With the Enablement Requirement

The Examiner's rejection is puzzling.  It appears to the Applicant that the §112 rejection is based on the Examiner's belief that specific claims limitations he refers to are contradicted by the specification.  If this is his position, however, it is never made clear.

In the office action, the Examiner rejected the following claims limitations:

> "the mechanism operating without receiving signals eliciting a response by the user" in claim 1;

> "the mechanism operating without receiving signals eliciting a response by the audience member" in claim 13; and

> "the device generating (sic – this was a typographical error in the amendment and should be "operating") without receiving signals eliciting a response by a user" in claim 20.

The Examiner argued that "Applicant's specification page 4, lines 11 through 15, clearly indicates that the presenter <u>will solicit a response</u>....on something the presenter has delivered." (Office Action at page 7).  The specification is correctly quoted.  However, applicant's "presenter" is presenting "a program received apart from the response device";

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the presenter is <u>never</u> described as a set of signals received by the device (such as Ferris' PAD data)!

The Examiner's analysis shows his complete misunderstanding of the claims.[1] The present invention, as described in the specifications and as claimed, is a device which operates without receiving signals to which a user responds. The <u>presenter</u>, who solicits a response, is clearly <u>not</u> part of the mechanism into which the user inputs his response. To support his §112 rejection, the Examiner quoted only a portion of the specification describing the solicitation of a response by the presenter; it continues as follows: "At this point an individual audience member inputs the member's response/question into the response device **410**" (p. 4, ll. 13-15), in response to the <u>presenter</u> of the program, <u>not</u> to signals received on the device.

In furtherance of his position, the Examiner referred to page 9, lines 1 through 5, arguing that Applicant's specification indicates that "the mechanism <u>does</u> receive signals eliciting a response by the user." However, the language from the specification that the Examiner quoted to support his rejection reads as follows: "Another indicator lets a user know when the response device has received information that the user may wish to view." However, the "information" referred to here does <u>not</u> elicit a response by the user, nor does it say that it does. As one skilled in the art would know, if a two-way paging system is used as the communication system **430**, a program presenter may send information to a particular audience member in the form of a page (Applicant's specification at p. 5, ll 1-4).

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[1] It may also explain the Examiner's mistaken, unrelenting reliance on the Ferris reference, as discussed *infra*.

However, this feature is not part of the claimed invention, but simply a function of the two-way paging system. The indicator light would let the audience member know there is information to view; it does not elicit a response!

Neither of the Examiner's objections support rejection of the claims under §112. Applicant's disclosure contains sufficient information regarding the subject matter of the claim as to enable one skilled in the pertinent art to make and use of the claimed invention. As such, Applicant's claims and his disclosure are in compliance with the enablement requirement of §112.

The Examiner's rejection for lack of compliance with the enablement requirement of §112 is not appropriate and must be withdrawn.

B.    Rejection Under 35 U.S.C. §102(b) As Being Anticipated by Ferris *et al*.

1.    The Ferris Reference – Generally, for claims 1 and 2, 13 through 15, 17, 20, 21, and 23.

The Examiner erred when he rejected claims 1 and 2, 13 through 15, 17, 20, 21, and 23 under 35 U.S.C. §102(b) as being anticipated by Ferris *et al.* (WO 99/04568).

The Ferris reference describes a remote control device for consumer broadcast receivers (see Abstract). It differs from a normal remote control by including a display. The reference specifies that "there is a need to have an outbound channel, holding the programme-associated data [PAD], which is broadcast to the user in parallel with the programme channel . . . ." (p. 3, ll. 26-27 – p. 4, l.1). The device receives PAD via a radio link, displays it to the user, and sends interaction data back to a central processing station.

As summarized by Ferris, the

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"invention provides apparatus and method for providing simple, efficient and economic display of advertisements, product and service offers, and other information (collectively, 'display data') to the users of broadcast receivers, and is intended to have particular application where said display data is related to the programmes picked up by such receivers. The invention also provides apparatus and method for users, where applicable, to interact with said display data (for example, to order an offered product, or to request more information about an advertised good or service), and for the details of such interaction (collectively, 'interaction data') to be sent back to the sponsoring party for processing." (Ferris, p. 6, ll. 14-22).

To operate, the Ferris device clearly requires the use of transmitted display data.

"Incoming display data is stored in memory within the said device until it becomes eligible for display. Generally, such data will be timed to become eligible for display at a point where the programme on the associated channel contains relevant content, (thereby satisfying condition 1) mentioned in the background section); in such a circumstance the display data may be termed programme associated data, or PAD, and the point in time of activation is known as the cue point. The list of PAD items and associated cue points, for each programme broadcast on a given channel (which can include infomercials and commercials, for our purposes) must be provided to a central PAD scheduler, either ahead of time, just in time, or some combination of both. The scheduler co-operates with a database system to hold this list, and, at the appropriate point (either ahead of or at the cue point), passes the next due PAD item, including its cueing information, through to a radio transmission system, which it turn sends it to users' handsets, as rehearsed above." (Ferris, p. 7. ll. 5-17)

Further, Ferris requires the feed of data to be ongoing.

"Notice that such a device, if it is to be generally useful, must be able to receive PAD items in an ongoing feed. There are two main reasons for this. First of all, the fact that any reasonably-priced embodiment of such a device can have only a modest amount of onboard memory, places a limit on the number of PAD items that can be downloaded to it in any given batch mode transfer. Second, for certain events, such as televised live horse races, the outcome is not known in advance, and so neither, a fortiori, is the content of any event-related PAD. Such PAD cannot, therefore, be downloaded in advance of the event using a batch mode transfer.

These two factors, namely limited buffer memory in the device, and the dependence of certain PAD items on live events, means that the ongoing feed of PAD to the device must take place in 'real time' or close to 'real time'. 'Reel [sic] time' feed is required in the second scenario mentioned, where PAD content is contingent upon an event, the outcome of which is unknown until the time of broadcast. Once the

event in question is determined (for example, a particular horse wins the race), the relevant PAD may be constructed and is then immediately due for presentation to interested users. Ideally, as little additional delay as possible is incurred from this point on; hence the term 'real-time'. Near 'real-time' feed is required in the first scenario, where PAD items transmitted to the user device must be relevant to a primary broadcast within the near future, if buffer overflow in the device is to be avoided." (Ferris, p. 4, ll. 27-28 – p. 5, ll. 1-19)

In all cases, the Ferris device <u>must</u> receive display data before a user may enter a selection related to the data displayed, and the display data the user views (an ad, a product offer, etc.) has been preselected and constructed by the broadcaster or "host." In all cases, the user is limited to "responding" to the data on the display; he cannot enter data he has constructed independently of the device.

The present invention, on the other hand, provides a device, method, and/or system which allows a user to provide responses to <u>any</u> type of programming, whether live or recorded, by using the device with a key pad to input his own data and then transmit the data over a standard communication system, such as a two-way paging system to a central processing unit. The response system is not tied to any one type of programming over a particular medium. Obvious uses include responding to programs broadcast over television, radio, or streaming internet, but the invention can also be used with prerecorded media, such as audio tapes or video tapes, or even live events. The response system does not download data or receive signals to which a user responds. Instead, the <u>user</u> of the system himself initiates the inputting of a program code (and possibly, the user code), and then enters his response to the program which he has received apart from the device.

The present invention solves several problems disclosed in the Ferris reference. Unlike the Ferris device, the present invention is not required to have "on board" memory

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to hold the downloaded PAD data, nor does it have the associated problem of which pieces of PAD data to discard when new messages come in (Ferris, p. 18, ll. 15-25). Further, the present invention can be effectively used with a low-cost paging network; it does not seem to be feasible to use the Ferris device with a paging network because paging networks are very low speed data networks which would have a difficult time transmitting all the PAD data required by the Ferris device. Finally, the present invention does not ever require the sophisticated means for synchronizing the transmission of PAD data to the transmission from a primary broadcaster, such as Ferris describes in his alternate embodiment. Clearly, the present invention differs greatly from the Ferris device, and is not anticipated thereby.

Note: On page 3 of the Office Action, the Examiner commented that the amended limitation "...the mechanism operating without receiving signals eliciting a response by the user" "ONLY requires the user input mechanism operates <u>without receiving signals eliciting a response by the user</u>." However, he then stated that "The amended claims limitation does NOT exclude that the response device <u>receiving display data (signals) NOT eliciting a response by the user, in which the user able to view</u>. The amended claims further does not require the response device <u>does Not receive any signals</u>." I was unable to discipher what the Examiner was trying to say, as the Ferris device clearly requires the device to receive display data which elicits a response by the user. His other comments are responded to *infra*.

2.    <u>Claim 1 and Claim 2</u>

In rejecting claim 1, the Examiner cited Fig. 4, page 23 of Ferris as disclosing the claim language "in response to a program received apart from the response device," stating

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that Ferris' "remote control device is used to respond to programming/'television programming shows,' i.e. tool show with option to buy a product received apart from the response device . . . ." However, this example does not involve a user's response to the show itself. In Ferris, the program is "'The Tool Show' – and as the presenter starts to demonstrate the use of good drilling technique 503, the handset 502 displays a programme-related offer 504 for the drill that the presenter is using. The PAD item corresponding to this offer will have been downloaded to the device from the relevant central processing station 420 (Figure 3) at some point previously, and cued up at the appropriate point for display . . . ." (Ferris, p. 23, II. 5-10) Further, Ferris' "user input mechanism" is not used for entry of user-initiated responses. The example used by the Examiner (Fig. 2L, page 27, II. 13-17) describes a device which "prompts" the user to enter a product/vendor identification code, which initiates a remote query to display product information. This is not a response to a program received apart from the device; instead it is simply input related to the display on the device. Nothing in Ferris suggests that a user can use the device to respond to anything other than PAD data displayed on the screen of the device.

Because claim 1 clearly states that the mechanism operates without receiving signals eliciting a response by the user, the Examiner made a convoluted argument that the claim "broadly reads on Ferris's response device able to receive display data (signals) that able user to elicit or Not to elicit a response by the user ...." (p.8 of the Office Action) His two examples show he completely misunderstands the claim language and the device itself. He states that the user "either to choose or NOT to choose to response to received

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display data (signals) by disabling or by NOT disabling the notification feature"; however, this has nothing to do with the present invention. The notification feature to which the Examiner refers is simply a way of attracting the user's attention to new display data; even if the user has disabled the notification feature, when he uses the device in Ferris, he is responding to PAD data which was received by the mechanism! The Examiner's reference to the locking feature is also puzzling. Ferris' "'lock' button **16**, if pressed removes purchasing authority from the handset until the user re-enters his or her PIN code." (Ferris, p. 22, ll. 22-24). That action has nothing to do with having a mechanism operating without receiving signals eliciting a response by the user! The Examiner's argument appears to revolve around his belief that the claim language reads on Ferris' device if its notification feature has been disabled and the "lock" button pressed. However, even if the user of Ferris' device has taken these actions, he will <u>still</u> be entering responses to PAD data he receives on Ferris' display. Clearly, nothing disclosed in Ferris anticipates a mechanism operating without receiving signals eliciting a response by the user.

The Examiner then claimed to find the "means for requiring the user's input of a program identifier code for the program received apart from the response device" in Ferris' input controller 611, and again cited the examples shown in Fig. 2A and 2L (purchasing a tool or other product). However, unlike the present invention, neither of these examples describes requiring use of a program identifier code, which allows for proper processing and correlation of the data a user inputs. Instead, Ferris' user is simply entering information to purchase products offered on the PAD display.

The Examiner then found that the central processing unit of the present invention

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reads on Ferris's microprocessor 607. However, the Examiner's discussion displays the fallacy of his argument: he states that:

> "by responding to the 'product/vendor code' input through the handheld device on the basis of the information inputted by the user, the inputted 'product/vendor code' is transmitted back to the central control station along with HUUID (page 13, 3rd paragraph). In doing so, the inputted 'product/vendor code' constitutes an input from the user of a program identifier code (PADUID) for the particular programming event (display PAD) in which the user is responding along with the user identifier code associated with the remote device (HUUID); see page 13, 3rd paragraph)"

He stated that the "product/vendor code" constitutes the input of a program identifier code, and the user identifier code is the HUUID. Nowhere did he find that Ferris' microprocessor can correlate <u>responses</u> the user has entered into the device to the program identifier code, or that <u>responses</u> are processed by the microprocessor. Perhaps that is because there are no such examples in Ferris.

Clearly, claim 1, and claim 2, which depends from claim 1, which should be allowable, are not anticipated by Ferris.

3.    <u>Claims 13, 14 and 17</u>

The Examiner indicated that claim 13 was analyzed with respect to apparatus claim 1, and that claim 17 was analyzed with respect to claim 2. Applicant's arguments related to claim 1, *supra*, are similarly relevant when reviewing claim 13. The Examiner ignored the fact that Ferris nowhere discloses having an audience member input the program identifier code. Further, the Examiner apparently lumps together "collecting the response data . . .," correlating the program identifier code to the responses, and processing the response data, referring generally to page 15, 1st paragraph; page 24, 1st through 3rd paragraphs. However, the material on page 15, 1st paragraph has no relevance at all to

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the rejection. Further, the latter reference to page 24 shows general uses of Ferris' device, but fails to disclose the step of correlating the program identifier code (entered by the audience member) to the audience member's responses. In the examples cited, Ferris discloses an audience member "responding" to the PAD data shown on his device. Because "responses" are always to PAD on the display, any response entered by an audience member which is not related to the PAD cannot be processed!

Claim 13, and claims 14 and 17, which both depend from claim 13, are not anticipated by Ferris and should all be allowable.

### 4. Claim 15

Claim 15, which is dependent upon claim 13, should be allowable as well. Further, Ferris does not disclose the claim element "having the presenter of the program respond to the audience member." The Examiner refers to page 9, 4th paragraph, as disclosing the element. However, the paragraph has nothing to do with having the presenter respond to the audience member. The word "interactive" as used in Ferris has nothing to do with having a presenter interact with a viewer. Instead, Ferris describes a user "interacting" with the display data by operating controls on the device (Ferris, p. 8, ll. 6-7). Claim 15 is not anticipated and should be allowable over Ferris.

### 5. Claim 20 and Claim 23

In rejecting claim 20, the Examiner found the step of "providing a program identifier code for the program being presented" as being Ferris' PADUID of the initial display data. However, Ferris' PADUID is defined at page 7, 4th paragraph, as a "unique identifier" that is part of a "PAD software object" which is sent from the central broadcasting station to the

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device. As a result, Ferris clearly does not disclose the step of "[H]aving an audience member input the program identifier code into the user input device." The Examiner sets forth a tortured argument that, since the selected PAD is transmitted back to the central control station along with the PADUID, that somehow the process "constitutes an input from the user of the program identifier code (PADUID) for the particular programming event (displays PAD) . . ." His argument is false; if anything, it shows that Ferris' PAD data is inextricably tied to its identifier (PADUID), and that Ferris provides no means by which a user can input a program identifier code for a program received apart from the device.

Further, because claim 20 clearly states that the mechanism operates without receiving signals eliciting a response by a user, the Examiner made a convoluted argument that the claim "broadly reads on Ferris's response device able to receive display data (signals) that able user to elicit or Not to elicit a response by the user . . ." (p.11 of the Office Action). His two examples show he completely misunderstands the claim language and the device itself. He states that the user can "choose or NOT to choose to response to received display data (signals) by disabling or by NOT disabling the notification feature"; however, this has nothing to do with the present invention. The notification feature to which the Examiner refers is simply a way of attracting the user's attention to new display data; even if the user has disabled the notification feature, when he uses the device in Ferris, he is responding to PAD data which was received by the mechanism! The Examiner's reference to the locking feature is also puzzling. Ferris "'lock' button **16**, if pressed removes purchasing authority from the handset until the user re-enters his or her PIN code." (Ferris, p. 22, ll. 22-24). That action has nothing to do with having a mechanism

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operating without receiving signals eliciting a response by the user! The Examiner's argument appears to revolves around his belief that the claim language reads on Ferris' device if its notification feature has been disabled and the "lock" button pressed. However, even if the user of Ferris' device has taken these actions, he will still be entering responses to PAD data he receives on Ferris' display. Clearly, nothing disclosed in Ferris anticipates a mechanism operating without receiving signals eliciting a response by the user.

Finally, nothing in Ferris describes the step of correlating the program identifier and the responses.

Claim 20 and claim 23, which depends from claim 20 and which was analyzed with respect to claim 2, are clearly not anticipated by Ferris and should be allowable.

6.    Claim 21

Claim 21, which is dependent upon claim 20, should be allowable as well. Ferris does not disclose the claim element "having the presenter of that program respond to the audience member." The Examiner refers to page 9, 4th paragraph, as disclosing the element. However, the paragraph has nothing to do with having the presenter respond to the audience member. The word "interactive" as used in Ferris has nothing to do with having a presenter interact with a viewer. Instead, Ferris describes a user "interacting" with the display data by operating controls on the device (Ferris, p. 8, ll. 6-7). Claim 21 is not anticipated and should be allowable over Ferris.

C.    Rejection of Claim 3 Under 35 U.S.C. §103(a) As Being Obvious Over Ferris et al WO99/04568) in view of Dobson (U.S. 6,704,317)

The Examiner agreed that "Ferris does not clearly disclose the transmitter is

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configured to send data burst over standard telephone lines; and the communicating system comprises a plain old telephone system." (Office Action at page 13) However, he argued that it would be obvious "to modify Ferris to have Ferris' transmitter configured to send data bursts over standard telephone lines" as taught by Dobson. However, nothing in Ferris suggests the desirability or utility of the modification suggested by the Examiner. Further, Dobson doesn't simply teach sending data bursts over standard telephone lines. In order to do so, one has to use a POTS modem together with an adapter acting as a gateway modem server that is accessible to the DMT LAN devices.

In any event, claim 3, which depends from claim 1, which should be allowable, should be allowable as well.

D.    Rejection Under 35 U.S.C. §103(a) As Being Obvious Over Ferris *et al.* (WO 99/04568)

   1.    Claims 4, 5 and 6

In rejecting these claims, the Examiner agreed that Ferris does not disclose the fact that the transmitter is configured to call telephone numbers of each of the telephone numbers having been associated with a particular response to the program; nor that the communication system is a plain old telephone system. However, he took Official Notice "that having a remote control with integrated modem with associated call number for communications purpose using a plain old telephone number is notoriously well known in the art." However, the use of a modem with an associated call number has nothing to do with either the present invention or with Ferris. The modem the Examiner refers to does not call one of several telephone numbers, each having been associated with a particular

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response to the program, as described in the present invention. Further, Ferris does not contain any suggestion that it could be configured to have a modem call one of several telephone numbers. In the absence of such a suggestion, the proposed modification is not likely. Therefore, the Examiner's taking an Official Notice of the use of modems is not only irrelevant to the present invention, it is also not persuasive. Applicant would remind the Board that his provisional application was filed over six years ago, and even now he is unaware of any device that can call different telephone numbers, depending upon which key a user presses on a response device; what is known in the art is having a presenter tell audience members to call different telephone numbers in order to provide a response, for instance, to register a particular vote.

The same argument can be made for the Examiner's treatment of claim 5 and claim 6. Nothing in Ferris teaches or suggests use of its device with an internet protocol system, and, therefore, his rejection on the basis of Official Notice should be set aside. Further, claims 4 and 5, which are dependent on claim 1, which should be allowable, and claim 6, which is dependent on claim 5, should be allowable as depending from allowable claims.

2.    Claim 18

The Examiner analyzed claim 18 with respect to claim 4. Therefore the argument in the preceding Section B.1 is equally applicable, and applicant will not repeat it here. Further, claim 18, which is dependent upon claim 13, should be allowable as depending from allowable claim 13.

3.    Claim 24

The Examiner analyzed claim 24 with respect to claim 4. Therefore, the argument

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in the preceding Section B.1 is equally applicable, and applicant will not repeat it here. Further, claim 24, which is dependent upon claim 20, should be allowable as depending from allowable claim 20.

E.     Rejection of Claim 7 Under 35 U.S.C. §103(a) As Being Unpatentable Over Ferris *et al* (WO 99/04568 In View Of Yoshinoba *et al* (U.S. 5,721,584)

Claim 7, which is dependent upon claim 1, should be allowable as depending from allowable claim 1.

F.     Rejection of Claims 19 and 25 Under 35 U.S.C. §103(a) As Unpatentable Over Ferris *et al* In View Of Lewis *et al* (U.S. 5,303,042)

The Examiner has argued that, while Ferris does not clearly describe having the audience member log into a remote computer system before inputting data into the device, Ferris <u>does</u> describe having users log on the keypad device (at page 25, 3rd and 4th paragraphs), and that "Ferris suggests that the system has some type of logging the interaction in a user database" (at page 8, 3rd paragraph)(Office Action at page 16). Once again, applicant is at a loss to understand the Examiner's analogies. The paragraphs on page 25 of Ferris, cited by the Examiner, merely describe how the user "unlocks" the device with a PIN, which can be preset for multiple users. The language contains no suggestion that a user logs into a remote computer system before inputting responses. Page 8 of the specification cited by the Examiner likewise has nothing to do with having a user log into a remote computer system. Instead, the word "logging" as used therein merely refers to the act of recording the interaction in a user database! The Examiner's use of Ferris is

simply not proper. Further, the Examiner's proposed modification of using Lewis "so that the remote computer able to track all viewer currently log on the system" (Office Action at page 17) would change the principle of operation of Ferris (Ferris is, after all, a remote control device) .

Claim 19 and Claim 25 should be allowable over the references cited.

## G.    Conclusion

The Examiner's rejection of the claims of applicant's invention must not be maintained. Throughout the prosecution, applicant has amended the claims several times to more clearly define the subject matter of his invention. After applicant successfully overcame the Guy reference (U.S. 5,833,468), the Examiner has continued to cite the Ferris reference, which discloses a device that does not anticipate or make obvious the present invention.

Applicant's invention is highly novel, useful, and nonobvious. It provides a device and system that can be used anywhere to respond to any type of programming without the use of a computer or other expensive equipment, and without the need for an internet connection. The user can input original thoughts, questions, and answers. After responses are received and processed, they can be sent to the presenter of the program, who can incorporate them into an ongoing presentation (such as a lecturer teaching a lesson to students over closed-circuit television).

The Examiner's reliance on the Ferris reference is flawed. All the claim elements of the present invention are not found in Ferris, which discloses a device concerned only with having a user "respond" to PAD which has been broadcast to a display on his remote

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control.

For the foregoing reasons, applicant submits that the Examiner's rejection of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 is in error and that it should be reversed. Applicant hereby requests that the Board withdraw the Examiner's rejection and allow claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25.

Respectfully submitted:

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# VIII. <u>APPENDIX</u>

## <u>CLAIMS</u>

1.  An electronic response device other than a personal computer, the response device configured to allow a user to send data over a standard communication system in response to a program received apart from the response device, the response device comprising:

> a user input mechanism for entry of user input and responses, the mechanism operating without receiving signals eliciting a response by the user;

> means for requiring the user's input of a program identifier code for the program received apart from the response device;

> means for providing a user identifier code, the means selected from the group consisting of having the user identifier code associated with the response device and having the user input the user identifier code;

> a central processing unit (CPU) for correlating the responses the user has entered into the user input mechanism to the program identifier code and for processing the program identifier code, the user identifier code, and responses the user has entered into the user input mechanism;

> a power source; and

> a transmitter connected to the CPU.

2.  The electronic response device according to claim 1, wherein:

> the input mechanism is selected from the group consisting of a key pad and

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voice recognition apparatus;

the transmitter comprises a two-way paging device; and

the communication system comprises a two-way paging system.

3.  The electronic response device according to claim 1, wherein:

the input mechanism is selected from the group consisting of a key pad and

voice recognition apparatus;

the transmitter is configured to send data bursts over standard telephone

lines; and

the communication system comprises a plain old telephone system.

4.  The electronic response device according to claim 1 wherein:

the input mechanism is selected from the group consisting of a key pad and

voice recognition apparatus;

the transmitter is configured to call telephone numbers each of the telephone

numbers having been associated with a particular response to the

program; and

the communication system comprises a plain old telephone system.

5.  The electronic response device according to claim 1, wherein:

the input mechanism is selected from the group consisting of a key pad and

voice recognition apparatus;

the transmitter comprises a wireless internet protocol device; and

the communication system comprises an internet protocol system.

6.  The electronic response device according to claim 5, wherein:

the internet protocol system further communicates with a telecommunication system.

7. The electronic response device according to claim 1, further comprising:

an indicator for indicating the connection status of the electronic response device to the communication system.

8 - 12. (Cancelled)

13. A method for receiving and processing responses to a program selected from the group consisting of a radio broadcast, a television broadcast, an internet broadcast, a satellite communication, an audio tape, a video tape, and a live performance, the method comprising:

providing a program identifier code for the program;

providing means for identifying an audience member;

providing a user input device other than a personal computer, the device operating without receiving signals eliciting a response by the audience member;

having the audience member input the program identifier code into the user input device;

having the audience member input responses into the user input device;

transmitting response data comprising the program identifier code, the means for identifying an audience member, and the responses over a standard communication system;

collecting the response data at a central location;

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correlating the program identifier code to the responses;

processing the response data.

14. The method of claim 13 which further includes:

sending the processed data to a presenter of the program for viewing.

15. The method of claim 14 which further includes:

having the presenter of the program respond to the audience member.

16. (Cancelled)

17. The method of claim 13 wherein the standard communication system is selected from the group consisting of a two-way paging network, a one-way paging network, and an internet protocol network.

18. The method of claim 13 wherein the standard communication system utilizes telephone lines and equipment and the response data is transmitted by having the user input device call a pre-assigned telephone number associated with the input response data.

19. The method of claim 13 which further includes having the audience member log in to a remote computer system before inputting response data into the user input device.

20. (Currently amended) A system for receiving and processing responses to a program selected from the group consisting of a radio broadcast, a television broadcast, an internet broadcast, a satellite communication, an audio tape, a video tape, and a live performance, the system comprising:

providing a program identifier code for the program being presented;

providing a user input device other than a personal computer, the device

generating operating without receiving signals eliciting a response by

a user;

    having an audience member input the program identifier code into the user

    input device;

    having the audience member input responses into the user input device;

    transmitting the program identifier code and the responses associated with

    a user identifier over a standard communication system;

    collecting, correlating, and processing the program identifier and the

    responses;

    routing the responses to a program presenter.

21.    The system of claim 20 which further includes:

    having the presenter respond to the audience member.

22.    (Cancelled)

23.    The system of claim 20 wherein the standard communication system is selected from the group consisting of a two-way paging network, a one-way paging network, and an internet protocol network.

24.    The system of claim 20 wherein the standard communication system utilizes telephone lines and equipment and the responses are transmitted by having the user input device call a pre-assigned telephone number associated with the input responses.

25.    The system of claim 20 which further includes having the audience member log in to a remote computer system before inputting the program identifier code and the responses into the user input device.

# IX. EVIDENCE APPENDIX

None.

# X. RELATED PROCEEDINGS APPENDIX

None.